may not connive with others to get his property out of the way by sale or otherwise, yet a fair and open disposition of it on a full consideration cannot be given a fraudulent character, although it may incidentally have the effect of leaving nothing which creditors can get hold of, and even though the debtor do this to meet some of his obligations, rather than others."

In Johnston *v.* Forsyth Mer. Co. (D. C.) 127 Fed. 845, a bill by a bankrupt's trustee to set aside an alleged fraudulent conveyance of the bankrupt's assets alleged that just prior to the filing of the petition the bankrupt's chief assets consisted of a stock of merchandise worth $6,000; that the stock was fresh, and, though a large part of the purchase price thereof remained unpaid, the bankrupt, while hopelessly insolvent, and known so to be by defendant, sold the stock to defendant at a price which was greatly below the market value of the merchandise; that the sale was conducted at night, with great secrecy, and in the morning, before business hours, the purchaser paid to one of the bankrupts $3,850 before an inventory had been taken, which was so hastily paid that $405.14 thereof had to be subsequently refunded; and that the sale was made to hinder and defraud the bankrupt's creditors, which was known to defendant. It was held that such allegations charged a fraudulent transfer with sufficient definiteness to withstand a demurrer. About hat we think there can be no doubt.

The bare transfer within the stipulated period is not of itself sufficient, but is a circumstance to be considered by the jury along with all the other facts in evidence. In this case (without going into a discussion of the evidence in detail) we think the facts adverted to in the beginning of this opinion were such as to entitle the plaintiff in error to have a jury say whether Webb made the payment under consideration with intent to hinder, delay, or defraud her creditors, and that instruction 6, asked for by the plaintiff in error, should have been given.

WOODY'S ADM'R *v.* SCHAAF *et al.*

March 21, 1907.

[56 S. E. 807.]

1. Bonds—Consideration—Actions—Evidence.—Where a bond for debt given by an intestate for a past consideration is not impeached, it is conclusive evidence of the debt against the administrator.

2. Insurance—Insurable Interest—Action—Evidence. — Where a creditor insured the life of his debtor to secure the payment of a debt, a bond as evidence of the debt, executed by the debtor a few

days after the taking of the insurance, for the same amount as the policy, which has not been impeached, is prima facie evidence of the creditor's insurable interest in the life of his debtor, in an action on the policy.

Appeal from Chancery Court of Richmond.

Bill by W. T. Woody's administrator against J. B. Schaaf and the Security Trust & Life Insurance Company. From a decree overruling the demurrer of the insurance company and for defendant Schaaf, the insurance company appeals. Affirmed.

S. A. Anderson, Jno A. Lamb, A. L. Holladay, and *Emmett Seaton,* for plaintiffs in error.

Smith, Moncure & Gordon, for defendant in error.

WHITTLE, J. This case originated in a bill in equity in the chancery court of the city of Richmond, filed by W. T. Woody's administrator against J. B. Schaaf and the Security Trust & Life Insurance Company, predicated upon the following allegations: That in 1900 the insurance company issued a policy on the life of Woody for the benefit of Schaaf, an alleged creditor, for $2,000; that, if Woody is indebted to Schaaf in any amount, the liability is less than $2,000, and the amount actually due, with premiums paid by him and interest, is all that he is entitled to receive on the policy, the residue being an asset of the estate; that Schaaf is insolvent, and, if permitted to collect the proceeds of the policy, the plaintiff will be without redress. The prayer of the bill, therefore, is that Schaaf be enjoined from collecting the policy, that the amount of his debt may be determined, and the rights of the parties adjusted as indicated.

Schaaf in his answer claims the entire amount of the policy. He avers that for many years he had conducted the business of a butcher in the city; that Woody, as a merchant, was a customer and kept a running account, covering the period from 1891 to 1898, which aggregated more than $2,000; that, seeing, that Woody could not pay the debt, Schaaf, with his consent, first took out a policy on his life for $2,000, payable to himself as creditor, in the Northwestern Life Insurance Company of Chicago; that he subsequently suffered that policy to lapse, and with like consent of Woody caused to be issued the present policy; that he paid the premiums, and exhibits the policy, which bears date April 19, 1900, with his answer; that, in order to close accounts and in acknowlegdment of his indebtedness, Woody on May 15, 1900, executed a bond to respondent for the amount of his indebtedness, $2,000.

The insurance company filed a demurrer and also answered the bill. The demurrer challenges the right of Woody's admin-

istrator to maintain the suit at all, since the bill does not allege that the premiums, or any of them, were paid by Woody, and shows that the insurance was effected by Schaaf for his own benefit as creditor. The answer denies liability to either the estate or Schaaf, alleging that Woody was not indebted to Schaaf, and that the policy is consequently a mere wager policy, and void.

The same issues are presented in different form by the cross-bill of Schaaf, and the answers of Woody's administrator and the insurance company to that bill.

On the pleadings and evidence the chancery court made a decree overruling the demurrer of the insurance company, and adjudging that Schaaf was a creditor of Woody by bond, to the extent of $2,000, and, as such, is entitled to receive the full amount of the policy. From that decree Woody's administrator and the insurance company appealed.

In our view of the matter the legal effect of the bond executed by Woody to Schaaf renders it unnecessary to review the other testimony. We may remark, however, in passing, that the evidence tends to sustain rather than to impugn the integrity of the debt. The bond, though executed 27 days after the date of the date of the policy, recites a past consideration, indebtedness by open account, which indisputably accrued prior to the issuance of the policy. The bond is therefore the equivalent—and, it may be fairly inferred from its terms and the circumstances attending its execution—the product of a settlement of antecedent transaction between the parties, and a formal acknowledgment of the balance due on pre-existing accounts.

In speaking of sealed instruments, in 3 Min. Inst. pt. 1, 139, it is said: "In all contracts under seal a valuable consideration is presumed, from the solemnity of the instrument, as a matter of public policy and for the sake of peace, and presumed conclusively, no proof to the contrary being admitted, either at law or in equity, so far as the parties themselves are concerned." See, also, Watkins *v.* Robertson, 105 Va. —, 54 S. E. 33.

In Spooner *v.* Hilbish, 92 Va. 333, 336, 23 S. E. 751, 752, it was held: "It is undoubtedly true, as a general rule, that a personal representative cannot be heard to impeach as fraudulent a transaction of his decedent in his lifetime."

So, Wigmore on Evidence, § 1081, note 2, observes: "No modern court doubts that a decedent whose rights are transmitted intact to his successor is a person whose admissions are receivable against a party claiming the decedent's rights as heir, executor, or administrator."

The cases of Cammack *v.* Lowis, 15 Wall. 643, 21 L. Ed. 244, Ins. Co. *v.* Schaefer, 94 U. S. 457, 24 L. Ed. 251, Warnock *v.*

Davis, 104 U. S. 775, 26 L. Ed. 924, Crotty *v.* Ins. Co., 144 U. S. 621, 12 Sup. Ct. 749, 36 L. Ed. 566, and other cases to which our attention has been called, are authority for the well-settled propositions that a sheer wager policy is contrary to public policy and void, and that the party claiming under a life insurance policy must have an insurable interest in the life of the assured.

"In cases where the insurance is effected merely by way of indemnity, as where a creditor insures the life of his debtor for the purpose of securing his debt, the amount of insurable interest is the debt." Warnock *v.* Davis, *supra.*

The decisions of this court are to the same effect. Roller *v.* Moore, 86 Va. 512, 10 S. E. 241, 6 L. R. A. 136; Ins. Co. *v.* Davis, 96 Va. 737, 32 S. E. 745, 44 L. R. A. 305; Bank *v.* Terry, 99 Va. 194, 37 S. E. 843; Lewis *v.* Palmer (Va.) 56 S. E. 341.

In this instance the appellee Schaaf has measured fully up to the standard fixed by the foregoing cases. He rests upon a bond for the full amount of the policy, which has not been impeached for fraud, mistake, or other ground of avoidance; and which therefore furnishes conclusive evidence of the debt against Woody's administrator, and prima facie evidence against the insurance company.

Under these circumstances the decree of the chancery court sustaining the validity of Schaaf's claim to the proceeds of the policy is plainly right, and must be affirmed.

Note.

Creditor's Insurable Interest in Debtor's Life.—It is a well-settled principle that a creditor has an insurable interest in the life of his debtor. And this rule has been applied to judgment creditors and simple contract creditors. Talbert *v.* Storum, 39 N. Y. Supp. 1047; Rawls *v.* American Life Ins. Co., 36 Barb. 357; Walker *v.* Larkin, 127 Ind. 100, 26 N. E. 684; First Nat. Bank *v.* Terry, 99 Va. 194, 37 S. E. 843.

A policy will be valid, made by a debtor in favor of his creditor, the balance beyond the debt to inure to the debtor's family. American Life & Health Ins. Co. *v.* Robertshaw, 26 Pa. (2 Casey) 189.

A creditor may have in insurable interest on the life of a debtor to a sum not greatly disproportionate to the benefit which might be reasonably supposed to accrue from the continuance of the debtor's life. Appeal of Corson, 113 Pa. 438, 6 Atl. 213, 18 Wkly. Notes Cas. 349.

Insurance premiums paid by a creditor for policies on the life of his debtor, subsequently canceled, constitute an insurable interest in the debtor's life. Grant's Adm'rs *v.* Kline, 115 Pa. 618, 9 Atl. 150, 19 Wkly. Notes Cas. 260.

A creditor may lawfully take out a policy of insurance on the life of his debtor in an amount to cover the debt with interest, and the cost of such insurance, with interest thereon, during the period of the expectancy of life of the assured, according to the Carlisle tables, and the fact that the debtor dies before the expiration of his expectancy does not render the insurance void. Ulrich *v.* Reinoehl,

143 Pa. 238, 22 Atl. 862, 28 Wkly. Notes Cas. 419, 13 L. R. A. 433; Shaffer *v.* Spangler, 144 Pa. 223, 22 Atl. 865, 28 Wkly. Notes Cas. 425.

A creditor has an insurable interest in the life of his debtor, and may take out a policy on the life of the latter, or the policy may be taken out in the name of the debtor and assigned to the creditor. Brockway *v.* Mutual Ben. Life Ins. Co. (C. C.), 9 Fed. 249.

In an action on a policy for $10,000 taken by a creditor upon the life of his debtor it appeared that shortly before it was issued the debtor had made an unqualified admission of an existing indebtedness of between $5,000 and $6,000 in a written request for further advances. The creditor had promised to make advances up to $10,000, although not bound by written contract to do so. The facts were fully stated in the application, and the insurer continued to receive premiums for several years up to the death of the assured, during which the creditor, on the faith of the policy, made advances, which, with the original debt and interest, exceeded the amount of the policy. Held, that the evidence showed an insurable interest in the creditor sufficient to sustain a verdict for $10,000, although at the date of the policy his interest did not amount to that sum. Curtiss *v.* Ætna Life Ins. Co., 90 Cal. 245, 27 Pac. 211.

Where a creditor takes a policy on his debtor's life for a sum exceeding the debt, a binding agreement to make further advances on demand to the full amount of the policy gives him an additional insurable interest. Curtiss *v.* Ætna Life Ins. Co., 90 Cal. 245, 27 Pac. 211.

A creditor of a firm has an insurable interest in the life of one of the partners thereof, although the other partner may be entirely able to pay the debt, and the estate of the insured perfectly solvent. Morrell *v.* Trenton Mut. Life & Fire Ins. Co., 64 Mass. (10 Cush.) 282, 57 Am. Dec. 92.

It is no objection to the validity of the insurance of his debtor's life by the creditor that each is a member of a firm, and that the secured debt is due from the one firm to the other. Rawls *v.* American Life Ins. Co., 36 Barb. 357.

A creditor's insurable interest in his debtor's life continues, although the statute of limitations would have barred his action before the debtor's death if it had been pleaded. Rawls *v.* American Mut. Life Ins. Co., 27 N. Y. 282, 84 Am. Dec. 280, affirming (1862) 36 Barb. 357.

Only the debtor or the insurance company can object to a creditor's attempt to reimburse himself for premiums formerly paid by him on canceled policies on the debtor's life by effecting subsequent insurance, and the debtor's administrator cannot do so. Grant's Adm'rs *v.* Kline, 115 Pa. 618, 9 Atl. 150, 19 Wkly. Notes Cas. 260.

NORFOLK & W. RY. CO. WILKINSON.

March 21, 1907.

[56 S. E. 808.]

1. Carriers—Carriage of Goods—Connecting Carriers—Delay in Delivery—Liability.—Where a shipment of lumber delivered to a carrier for transportation to a certain point beyond such carrier's line, and by it turned over to a connecting carrier, was delayed in